

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Donald McCallum
Application No. : 10/524,727
Examiner : Mark T. Le
Group Art Unit No. : 3617
Confirmation No. : 8391
Filed : September 19, 2005

For: TURNOUT/CROSSOVER SECTION FOR RAILWAY TRACK

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**RESPONSE TO OFFICE COMMUNICATION REGARDING THE NON-COMPLIANT
RESPONSE TO RESTRICTION REQUIREMENT**

Sir:

This is a response to the Office Communication mailed October 21, 2008 regarding the non-compliant Response to the Restriction Requirement in the above-identified application. The Office Communication set forth a one-month shortened statutory period for reply. Accordingly, this response is timely filed and is fully responsive.

Amendments to the Claims begin on page 2 of this paper.

Remarks begin on page 9 of this paper.

AMENDMENTS TO THE CLAIMS

This listing of claims will replace all prior versions, or listings, of claims in this application.

1. (Previously Presented) A turnout apparatus for a railway track, the turnout apparatus comprising a raised track surface which is adapted to provide a path along which wheels of a train can travel from one railway track to another, wherein the raised track surface is of a sufficient height such that the wheels of the train are arranged to clear the railway tracks.
2. (Withdrawn) The apparatus according to claim 1, wherein a crossover comprising a pair of turnouts is provided, the crossover being non-intrusive and optionally temporary.
3. (Withdrawn) The apparatus according to claim 1, wherein the raised track surface comprises a pair of rails, each rail further comprising a ramp surface which comprises a linear taper from a short or no height end to a relatively tall height end, the relatively tall height end being of the same height as that of the raised track surface and adjacent to an end of the raised track surface, the two combining to provide a path along which the wheel is permitted to travel while maintaining a substantially equal distance between a pair of raised rails, which combined, form the raised track surface.
4. (Cancelled)
5. (Cancelled)
6. (Cancelled)
7. (Withdrawn) The apparatus according to claim 3, wherein the ramp surface comprises a ramp for each rail, where both ramps incline simultaneously, avoiding differential levels, in relation to the respective rails of the railway tracks.

8. (Withdrawn) The apparatus according to claim 3, wherein at least a portion of each rail of the raised track surface comprises a slot formed therein, the slot being formed below a rail head portion and arranged to lie over or around the rail of the railway track being crossed with the rail head portion being releasably fixed to the rail being crossed.

9. (Cancelled)

10. (Previously Presented) The apparatus according to claim 1, wherein at least a portion of each rail of the raised track surface comprises a rail head portion arranged to lie over or around a supporting member, the supporting member comprising a longitudinal axis which is arranged parallel to a longitudinal axis of the rail of the railway track and is arranged to lie over or around the rail of the railway track being crossed.

11. (Cancelled)

12. (Cancelled)

13. (Previously Presented) The apparatus according to claim 10, wherein the supporting member comprises at least an upper supporting member and at least a lower supporting member, the upper supporting member being planar and having an upper surface and a lower surface, the upper surface attached to at least a portion of a lower surface of the raised track and the lower surface laying on top of an uppermost surface of the lower supporting member.

14. (Cancelled)

15. (Cancelled)

16. (Cancelled)

17. (Previously Presented) The apparatus according to claim 13, wherein the planar upper supporting member is substantially wider than the rail of the railway track being crossed and comprises a rectangular plate member.

18. (Cancelled)

19. (Previously Presented) The apparatus according to claim 13 wherein a pair of guide means are provided along at least a portion of a length of the upper supporting member, the guide means running parallel to the upper supporting member's longitudinal axis, and projecting downwardly in order, in use, to straddle the rail of railway track being crossed.

20. (Cancelled)

21. (Previously Presented) The apparatus according to claim 13, wherein a pair of lower supporting members are provided at either side of at least a portion of the rail of the railway track being crossed, the pair of lower supporting members combining to provide a substantially similar shape, width and position along the rail of the railway track being crossed as the upper supporting member, and are adapted to be releasably engaged thereto and releasably fixed thereto.

22. (Cancelled)

23. (Cancelled)

24. (Withdrawn) The apparatus according to claim 1, wherein at least a portion of the raised track surface is supported by the rail of the railway track being crossed and a fixing means and is formed on top of a rail head portion, wherein the height of a crossover member of the raised track surface at least equals the depth of a flange portion of the wheel of the train.

25. (Cancelled)

26. (Withdrawn) The apparatus according to claim 1, wherein the raised track surface comprises a plurality of rail members, one or more of which comprise a curved radius away from one of the railway tracks towards the other railway track, the plurality of rail members combining to form a turnout having a substantially continuous rail surface and comprising:

a ramp member adapted to raise the train wheel to the raised height;

a curved radius rail adapted to urge the train away from one of the railway tracks towards the other railway track;

a substantially straight rail adapted to transfer the train from the curved radius rail of one track toward the other track; and

a crossover rail adapted to allow the train to pass over the inner rails of the first and second existing railway tracks at the raised height.

27. (Withdrawn) The apparatus according to claim 1, wherein at least a portion of the raised track surface is supported in the lateral and/or vertical direction at a plurality of locations along its length by a support device, the support device comprising a plurality of pot sleeper arrangements.

28. (Cancelled)

29. (Cancelled)

30. (Cancelled)

31. (Withdrawn) The apparatus according to claim 2, wherein, one or more sections of the crossover are removed from engagement with one of the first and second existing railway track(s), such that the train does not travel onto the other of the first and second existing railway tracks and a second portion of the raised track surface and at least a lower supporting member are left in place to allow normal running of a train along one of a first and second existing railway track(s) having a crossover installed.

32. (Cancelled)

33. (Cancelled)

34. (Withdrawn) An apparatus for facilitating Single Line Working on a second railway track to clear a first railway track for maintenance or other purposes, the apparatus comprising a first non-intrusive crossover and a second non-intrusive crossover being spaced apart from the first non-intrusive crossover in the direction of the longitudinal axis of the pair of railway tracks, and which provide a path along which wheels of a train can travel from the first to the second railway track and from the second to the first railway track.

35. (Withdrawn) The apparatus according to claim 34, wherein at least one of the first non-intrusive crossover and the second non-intrusive crossover comprise a raised track surface, the raised track surface being provided with a supporting means to support the passage of trains and a pair of turnouts, each pair of turnouts comprising a pair of rails.

36. (Cancelled)

37. (Cancelled)

38. (Withdrawn) A method which enables Single Line Working on a second railway track to clear a first railway track for maintenance by other purposes, the method comprising the steps of:
providing a first non-intrusive crossover;

providing a second non-intrusive crossover at a location which is spaced apart from the first non-intrusive crossover in the direction of the longitudinal axis of the pair of railway tracks;

passing the train along the first non-intrusive crossover;

passing the train along the portion of the second railway track between the first and second non-intrusive crossover;

passing the train along the second non-intrusive crossover, such that the train is returned to a location on the first railway track which is spaced apart in the longitudinal direction from the first non-intrusive crossover.

39. (Withdrawn) A pot sleeper for supporting a rail of a railway track, the pot sleeper comprising:

a body having an, in use, substantially planar upper surface onto which rails may be connected;

front and rear faces which extend downwardly at an angle to the upper surface, the faces having lower contact edges for contact with the ground; and

a pair of side ends which extend downwardly at an angle to the upper surface for a greater distance than the front and rear faces.

40. (Withdrawn) The pot sleeper according to claim 39, wherein said lower contact edges have a greater surface area than the cross-sectional area of the front and rear sides, the front and rear faces combining with the upper surface to form an in use, inverted 'U' shaped body, the body being hollow and adapted to be at least partially filled with a filling material, while the pair of side ends combine to close the longitudinal axis of the 'U' shaped body.

41. (Cancelled)

42. (Cancelled)

43. (Withdrawn) The pot sleeper according to claim 39, comprising:

a coupling mechanism provided on the upper surface to permit coupling of the pot sleeper to a rail; and

a connection mechanism provided to couple a first to a second respective pot sleeper, wherein the connection mechanism includes a substantially rigid member which extends therebetween, the substantially rigid member arranged to pass underneath the rails of an existing railway track.

44. (Cancelled)

45. (Cancelled)

46. (Withdrawn) The pot sleeper according to claim 39, wherein the pot sleeper is installed and/or maintained in ground ballast by driving the pot sleeper into the ground ballast by mechanical vibrating mechanism means; and inserting an additional ballast or other material into the hollow body of the pot sleeper to at least establish the height of the pot sleeper, in use.

47. (Cancelled)

REMARKS

Applicant wishes to thank the Examiner for the careful consideration given to this application. The Examiner has restricted the application into three (3) invention groups broken down as follows:

- I. Claims 1-3, 7-8, 10, 13, 17, 19, 21, 24, 26, 27 and 31, drawn to a turnout apparatus;
- II. Claims 34-35 and 38, drawn to apparatus for facilitating single line working; and
- III. Claims 39-40, 43 and 46, drawn to pot sleeper.

Applicant provisionally elects, with traverse, Invention I as defined by claims 1-3, 7-8, 10, 13, 17, 19, 21, 24, 26, 27 and 31, drawn to a turnout apparatus. The Examiner has further required an election of species of the generic invention. Therefore, in order to be fully responsive, Applicant provisionally elects, with traverse, Species II, the alternative embodiment shown in Figures 19a-19f and 23a-23d. Applicant believes that claims 1, 10, 13, 17, 19 and 21 are included within Species II.

It is respectfully submitted that the search classification for at least Inventions I and II will substantially overlap at least because the apparatus of Invention I shares elements with the apparatus of Invention II. Applicant respectfully submits that such searches can be concurrently performed and that the Examiner will not be seriously burdened by searching and considering the inventions as described in all of the presently filed claims. Accordingly, Applicant respectfully requests withdrawal of the Restriction Requirement from Inventions I and II.

Additionally, the Examiner alleges that the application contains claims directed to more than one species and that they are deemed to lack unity of invention because they are not linked to form a single general inventive concept. Applicant respectfully disagrees as the species are similar and relate to the same general inventive concept.

Additionally, it is respectfully submitted that the search classifications for the invention species substantially overlap. Applicant respectfully submit that such search can be concurrently performed and that the Examiner will not be seriously burdened by searching and considering the invention species as described in all the presently filed claims. Accordingly, Applicant respectfully requests withdrawal of the restriction of the inventions of Species 1

through V. Furthermore, Applicant believes that a species election as set forth in the Office Action is premature as there has been no determination made on the claims.

By this election, Applicant does not admit, nor does Applicant waive the right to argue against the Examiner's statement that the groups of inventions are patentably distinct at a later date. Applicant expressly reserves the right to present the claims of Inventions II or III, or Species I, III, IV or V or other claims, in one or more divisional, continuation, or continuation-in-part applications at a later date.

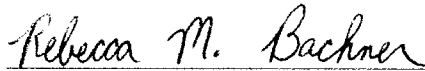
Based on the provisional election of Invention I, Species II, claims 1, 10, 13, 17, 19 and 21 will remain pending if the restriction is not withdrawn.

CONCLUSION

In the event that an additional fee is required for this response, the Commissioner is hereby authorized to charge such fees to Deposit Account No. 50-0436.

Should the Examiner have any questions or comments, or need any additional information from Applicant's attorney, he is invited to contact the undersigned at her convenience.

Respectfully submitted,



Rebecca M. Bachner
Registration No. 54,865

PEPPER HAMILTON LLP
One Mellon Center, 50th Floor
500 Grant Street
Pittsburgh, PA 15219-2505
Telephone: (412) 454-5000
Facsimile: (412) 281-0717
Date: November 20, 2008